

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 174 of 1998

in

CIVIL APPLICATION No 10998 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

JYOTIBEN NATVARLAL BHATT

Versus

CHHELSHANKER CHHOTALAL JOSHI

Appearance:

MS MEGHA JANI for Appellants
MR CH VORA for Respondents No. 1 & 2
TANNA ASSOCIATES for Respondent No. 3

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE A.L.DAVE

Date of decision: 02/04/98

ORAL JUDGEMENT

1. Admitted. Mr. C.H. Vora, learned Advocate,

waives service of notice of admission on behalf of respondents No.1 and 2 and Mr. Brahmabhatt waives service for M/s Tanna Associates, Advocates for respondent No.3. With the consent of the parties, the matter is taken up today for final hearing.

2. This appeal is directed against an order passed by the learned Single Judge, on January 13, 1998, rejecting Civil Application No.10998 of 1997 for condonation of delay in First Appeal No.4660 of 1997.

3. The facts of the case are that respondents No.1 and 2 had preferred an application for probate before the learned Civil Judge (S.D.), Bhuj, being Misc. Application No.106 of 1991. Later on, the said application was transferred to the Court of learned Civil Judge (S.D.), Anjar, upon bifurcation of jurisdiction and was renumbered as Civil Misc. Application No.3 of 1995. The probate application was proceeded with at Anjar after due notice to the present applicant and her Advocate and, ultimately, upon hearing the respondents, the matter was disposed of. The said order was challenged before this Court by the appellants by filing First Appeal No.4660 of 1997. As the said appeal was filed beyond the period of limitation, Civil Application No.10998 of 1997 for condonation of delay was preferred. That application came to be rejected by the learned Single Judge and that has resulted into present Letters Patent Appeal.

4. The main ground for explaining the delay is that the petitioner was not aware about the fact that the matter was being proceeded with at Anjar. The second ground is that applicant No.2 is a minor and her interest also needs to be protected. The third ground is that a delay of 131 days is computed because the appeal was preferred as an indigent person. If the appellant were to pay up the Court fees and to challenge the same, the delay would have been further reduced by 30 days, resulting into total delay of 101 days. It was also argued by learned counsel Mr. Thakore that this delay has nothing to do with any negligence prior to the proceeding before the Civil Court at Anjar. On merits also, he argued that no executor is appointed in the will and, as such, the probate should not have been granted and keeping in mind the observations made in State of Haryana v. Chandra Mani & Ors., (1996) 3 SCC 132 and the principles laid down therein, the delay may be condoned.

5. Mr. Vora, learned Advocate appearing for opponents No.1 and 2 has strongly opposed the appeal. His case is that the appellant has come with wrong facts

and made charges against the Advocate at a later stage when the true facts were brought on record in the affidavit in reply. Relying on the decisions of the Supreme Court in Binod Bihari Singh v. Union of India, AIR 1993 SC 1245; Ramlal and Others v. Reva Coalfields Ltd., AIR 1962 SC 361; and Salil Dutta v. T.M. & M.C. Private Limited, 1993(4) JT 528, he submitted that the decision of the learned Single Judge is perfectly in order and does not call for any interference.

6. Mr. Brahmbhatt for M/s. Tanna Associates, Advocates for respondent No.3 does not seriously contest the appeal.

7. We have been taken through the record of the matter and we find that in the application for condonation of delay, the appellant-applicant has come up with a case as under :-

"The applicants were not aware that the matter was being heard and proceeded with at the court at Anjar" (emphasis supplied).

Our attention is also drawn to the notice issued by the Anjar Court dated 6th March, 1995, addressed to the appellant and her Advocate, wherein it is stated that the matter would be proceeded with ex-parte at Anjar, if the appellants did not appear in the matter.

8. However, keeping in mind the fact that the interest of minor is involved and that it would amount to denial of her right of agitating the case on merits, without making any observation on merits of the matter, we feel that the interest of justice would be served better if the delay is condoned. Mr. Thakore makes a statement that he is prepared to pay the Court fee. That would again reduce the delay to 101 days. This delay cannot be considered to be grossly inordinate and taking a Portian approach would be justified in such a case. It may, however, be observed that the statement made in the application about the lack of knowledge does not specifically deny the receipt of summons. It only indicates that the appellant was unaware about the matter being proceeded with at Anjar. Keeping in light her affidavit-in-rejoinder, it would not be out of place for a lady to presume that when the matter is entrusted to an Advocate for getting it transferred from Anjar to Bhavnagar, the matter, in all probability, would not proceed with at Anjar. Therefore also, the ends of justice would be served better if, ultimately, the matter is decided on merits by the learned Single Judge by

providing opportunity to the parties to put forward their respective cases.

9. In the result, this appeal is allowed. The order passed by the learned Single Judge in Civil Application No.10998 of 1997, dated January 13, 1998, is hereby set aside and the application is allowed. Delay is condoned. The office will now place First Appeal No.4660 of 1997 for admission before the learned Single Judge. No order as to costs.

(C.K. THAKKAR, J.)

(A.L. DAVE, J.)

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